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PART XII.

INTERFERENCES BY BELLIGERENTS WITH MAILS.

The Secretary of State to Ambassador W. H. Page.

[Telegram.]

DEPARTMENT OF STATE,
Washington, January 4, 1916.

Department advised that British customs authorities removed from Danish steamer *Oscar Second* 734 bags parcel mail en route from United States to Norway, Sweden, and Denmark; that British port authorities have removed from Swedish steamer *Stockholm* 58 bags parcel mail en route Gothenburg, Sweden, to New York; that 5,000 packages of merchandise, American property, have been seized by British authorities on the Danish steamer *United States* on her last trip to the United States; that customs authorities at Kirkwall, on December 18, seized 597 bags of parcel mail from steamer *Frederich VIII* manifested for Norway, Sweden, and Denmark. Other similar cases might be mentioned, such as that of the steamer *Heligolav*. Department inclined to regard parcel post articles as subject to same treatment as articles sent as express or freight in respect to belligerent search, seizure, and condemnation. On the other hand, parcel post articles are entitled to the usual exemptions of neutral trade, and the protests of the Government of the United States in regard to what constitutes the unlawful bringing in of ships for search in port, the illegality of so-called blockade by Great Britain, and the improper assumption of jurisdiction of vessels and cargoes apply to commerce using parcel post service for the transmission of commodities. Please bring this matter of parcel post formally to the attention of the British Government.

The Department is further informed that on December 23 the entire mails, including sealed mails and presumably the American diplomatic and consular pouches, from the United States to the Netherlands were removed by British authorities from the Dutch steamer *New Amsterdam*; that on December 20 the Dutch vessel *Noorder Dyke* was deprived

at the Downs of American mail from the United States to Rotterdam, and that these mails are still held by British authorities. Other similar instances could be mentioned, as the cases of the steamers *Rotterdam* and *Noordam*. The Department can not admit the right of British authorities to seize neutral vessels plying directly between American and neutral European ports without touching at British ports, to bring them into port, and, while there, to remove or censor mails carried by them. Modern practice generally recognizes that mails are not to be censored, confiscated, or destroyed on high seas, even when carried by belligerent mail ships. To attain same end by bringing such mail ships within British jurisdiction for purposes of search and then subjecting them to local regulations allowing censorship of mails can not be justified on the ground of national jurisdiction. In cases where neutral mail ships merely touch at British ports, the Department believes that British authorities have no international right to remove the sealed mails or to censor them on board ship. Mails on such ships never rightfully come into the custody of the British mail service, and that service is entirely without responsibility for their transit or safety.

As a result of British action, strong feeling is being aroused in this country on account of the loss of valuable letters, money orders, and drafts, and foreign banks are refusing to cash American drafts, owing to the absence of any security that the drafts will travel safely in the mails. Moreover, the detention of diplomatic and consular mail is an aggravating circumstance in a practice which is generally regarded in this country as vexatiously inquisitorial and without compensating military advantage to Great Britain. Please lay this matter immediately before the British Government in a formal and vigorous protest and press for a discontinuance of these unwarranted interferences with inviolable mails. Impress upon Sir Edward Grey the necessity for prompt action in this matter.

LANSING.

The French Ambassador to the Secretary of State.

[Translation.]

FRENCH EMBASSY,
Washington, April 3, 1916.

MR. SECRETARY OF STATE: My Government informs me that several neutral powers, the United States among them, have raised certain ob-

jections in regard to the action which the allies had to decide they must take with respect to mail matter on account of the fraud and violence exercised in that line by their enemies.

After long toleration those acts became so numerous and aggravated that it was no longer possible to acquiesce in their being indefinitely carried on. Hence the provisions which the allied Governments consider to be warranted by both the circumstances and the texts but which have nevertheless given rise to the above-mentioned objections.

These objections have been carefully examined and the French and English Governments have, in common accord, set forth in the inclosed memorandum the result of the said examination.

In transmitting, by order of my Government, that paper to Your Excellency, I am instructed to express to you the hope that you will kindly recognize the weight of the arguments therein presented in regard to an action which, besides, never was circumscribed by absolute rules of limitation. In your telegram of January 4, last, to the American ambassador at London and thereafter made public, Your Excellency only specified that: "Modern practice generally recognizes that mails are not to be censored, confiscated, or destroyed on high seas, even when carried by belligerent mail ships."

If, even before late events, those practices were not unanimously followed, Your Excellency will judge whether the arguments and facts set forth in the inclosed note do not amply justify, as we believe they do, our refraining from complying with them at present.

My instructions, on the other hand, warrant my assuring Your Excellency that precise instructions are issued not to subject innocent neutral mails and, of course, neutral diplomatic pouches to avoidable delay.

Be pleased, etc.,

JUSSERAND.

[Inclosure—Translation.]

MEMORANDUM RELATIVE TO POSTAL CORRESPONDENCE ON THE HIGH SEAS.

February 15, 1916.

The treatment of mail correspondence carried by sea has, in the course of the present war, been the object of various uncertainties, has occasioned some confusion, and at times given rise to criticisms which, for the sake of international relations and neutral commerce, the allied Governments deem it advisable to dispel.

It has always been and is the paramount object of postal services to receive, carry, and distribute written correspondence or missive letters.

By degrees recourse was had to the same services for the transmission of printed documents, then samples, valuables, and finally, under the name of "post parcels," almost every kind of merchandise, provided only that certain conditions were met in respect of weight, bulk, and packing.

It is also known that, when bearing postage stamps, any sealed wrapper, irrespective of its contents, weight, or bulk, may be mailed and is treated as a letter by the postal administrations.

The reflex action of the war on that state of things suggests the following remarks:

At the time of the second conference of The Hague in 1907, the Imperial German Government argued that the telegraph offering belligerents much quicker and safer means of communication than the post, there was no longer any interest in regarding, as theretofore, postal correspondence as apt to prove contraband by analogy and in disturbing its transmission through seizure and confiscation. Their confidence won by a proposition that looked so pacific, the other powers concurred. Article I of the eleventh Convention of The Hague of 1907 stipulates, as is known, that thenceforward postal correspondence on the high seas is "inviolable."

A first remark must be made with respect to the "post parcels."

The shipment of merchandise by "parcel post" is a mode of shipment and transportation analogous to shipment and transportation on way bills or bills of lading, with this difference, that the transportation is undertaken by the mail service, which moreover sometimes turns it over to common carriers, as is the case in France.

In no wise do such "parcels" constitute "letters" or "correspondence" or "despatches," and they are clearly not withdrawn in any way from the exercise of the rights of police, supervision, visitation, and eventual seizure which belong to belligerents as to all cargoes on the high seas.

This was shown notably in a communication of the Post Office Department of the United States addressed on April 8, 1915, to the French authorities and transmitting a statement in conformity therewith from the commander of the *Prinz Eitel Friedrich*, a vessel of the Imperial German Navy, regarding the post parcels shipped on the French mail steamer *Floride*, which the first-named cruiser had captured. (See Exhibit I.)

The allied Governments have also adopted this view, which in their opinion is fully founded in law and superabundantly justified by the facts.

Among many other examples it will be sufficient to cite: 1,302 post parcels, containing together 437.510 grams of india rubber for Hamburg (steamers *Tijuca*, *Bahia*, *Jaguaribe*, *Maranhao*, *Acre*, *Olinda*, *Para*, *Brazil*); or again, 69 post parcels, containing 400 revolvers for Germany via Amsterdam (S. S. *Gelria*).

As regards the forwarding of letters, wrappers, envelopes, and others entrusted to the postal services and generally contained in the mail bags of the post office of the countries which send them forth, the allied Governments bring the following consideration to the notice of the neutral Governments:

Between December 31, 1914, and December 31, 1915, the German or Austro-Hungarian naval authorities destroyed, without previous warning or visitation, 13 mail ships (see Exhibit 2) with the mail bags on board, coming from or going to neutral or allied countries, without any more concern about the inviolability of the despatches and correspondence they carried than about the lives of the inoffensive persons aboard the ships.

It has not come to the knowledge of the allied Governments that any protest touching postal correspondence was ever addressed to the Imperial Governments.

Under dates of August 11, 17, and 18, 1915, the neutral mail steamers *Iris* (Norwegian), *Haakon*, *VII* (Norwegian), *Germania* (Swedish) had the mail bags they carried from and to all places seized on the high seas by the German naval authorities; the letters and correspondence were censored by the German authorities, as proven by the photograph herein inclosed by way of illustration (Exhibit 3).¹

The allied Governments understand that subsequently the Imperial German Government, while announcing its intention to desist from such seizures, declared that the said seizures were and would be fully warranted in its opinion. According to the Imperial German Government, the eleventh Convention of The Hague of 1907, not having been ratified by all the powers at present engaged in the war, would be inapplicable.

Finally the supervision within the territories of the allies of various mail bags shipped on mail steamers that call at certain ports in the said territories more recently disclosed the presence in the wrappers, envelopes, and mail matter of contraband articles particularly sought after by the enemy, and notably: On board the S. S. *Tubantia*, arriving in

¹ Not printed.

Europe, 174½ pounds of india rubber, of which 101 pounds of the Para, highest grade, and seven parcels of wool; on board the S. S. *Medan*, seven parcels of crude rubber. That same supervision, exercised under the same conditions on mail bags from Europe which at first sight might have been supposed to contain nothing but correspondence, uncovered in the bags put on board the single mail steamer *Zaandyjk* (Dutch) not less than 368 parcels of miscellaneous goods.

The following letter from the German firm of G. Vogtman and Co., dated from Hamburg, No. 16, Glockengiesserwall, December 15, 1915, is particularly instructive:

[Translation.]

For some time past we have been receiving regularly from Para invoices of crude india rubber, and you might turn your attention to that line of business. The shipments are made in the shape of "Samples without value," registered, about 200 parcels in every mail, each containing about 320 grams of rubber, net. The trouble of doing up the parcels and the high cost of postage are amply covered by the high price commanded by the commodity here.

It is known that on December 15, 1915, crude india rubber, which the German State took all up, was worth about 25 marks per kilog, and, as the Hamburg merchant remarked, "ein guter verdienst nicht ausgeschlossenen ist" (a handsome profit is not barred out).

Hostile traffic, shut out of the mastery of the seas, thus resorted to hide in mail matter in order to get through all kinds of merchandise, contraband of war even included, apparently by imposing on the post office department of the neutral states.

From a legal standpoint, the right of belligerents to exercise police and supervision powers over vessels and particularly over what they carry has never, to the knowledge of the allied Governments, been subject to exceptions, not any more in regard to mail bags than in regard to any other cargo; nay more, as late as 1907 the letters and despatches themselves could be seized and confiscated.

By the eleventh Convention of The Hague and for the reasons above stated, the signatory powers waived the right to so seize despatches and declared postal correspondence to be inviolable.

The said inviolability only detracted from the public law as far as "correspondence"—that is to say, despatches or "missive letters"—are concerned, because, as we have seen, it was thought, rightfully or wrongfully, that belligerents having in the telegraph a better medium of correspondence, correspondence by mail was of no interest in warfare.

The result is, on the one hand, that inviolability does not apply to any mail matter that is not "correspondence"—that is to say, "missive letters"—and, on the other hand, that this inviolability would be given a wider scope than it possesses if it were regarded as exempting from any supervision goods and articles shipped by mail, even though they were contraband of war.

Under these conditions, the allied Governments announce:

1. That from the standpoint of their right of visitation and eventual arrest and seizure, merchandise shipped in post parcels needs not and shall not be treated otherwise than merchandise shipped in any other manner.

2. That the inviolability of postal correspondence stipulated by the Eleventh Convention of The Hague of 1907 does not in any way affect the right of the allied Governments to visit and, if occasion arise, arrest and seize merchandise hidden in the wrappers, envelopes, or letters contained in the mail bags.

3. That true to their engagements and respectful of genuine "correspondence," the allied Governments will continue, for the present, to refrain on the high seas from seizing and confiscating such correspondence, letters, or despatches, and will insure their speediest possible transmission as soon as the sincerity of their character shall have been ascertained.

EXHIBIT 1.

POST OFFICE DEPARTMENT

SECOND ASSISTANT POSTMASTER GENERAL,

DIVISION OF FOREIGN MAILS,

Washington, April 8, 1915.

I have the honor to inform you that the German auxiliary cruiser *Prinz Eitel Friedrich* delivered to the post-master of Newport News, Va., on March 12, 144 mail bags for places in South America which had been transhipped from the French steamer *Floride* to the said cruiser before it sank the steamer. The despatches, which appeared to be intact, were sent to the New York office, whence they were forwarded to destination in the same condition and at the first opportunity.

In delivering to the officials at Newport News the aforesaid despatches the commander of the *Prinz Eitel Friedrich* declared that the post parcels on board the steamship *Floride* had been regarded as merchandise and not as correspondence; that is the reason why he did not

have them taken out of the *Floride* as the other mail matter was, but allowed them to sink with the vessel, basing his action on the Declaration of London, according to which parcels are merchandise and not correspondence.

I further inform you that the New York Post Office advised the Bordeaux office of these facts by means of a check slip.

EXHIBIT 2.

Mails destroyed by enemies from December 31, 1914, to December 31, 1915.

Names of ships.	Tonnage.	Dates.	Enemy ships.	Remarks.
1. <i>Highland Brae</i>	7,634	Dec. 31, 1914	<i>Kaiser Wilhelm.</i>	Mails and post parcels from Buenos Aires, Santiago, and Montevideo.
2. <i>Tokomaru</i> . . .	6,084	Jan. 30, 1915	Torpedoed by a German submarine.	Parcels and printed matter from New Zealand.
3. <i>Aguila</i>	2,114	Mar. 27, 1915	.....do.....	Mail for Madeira and the Canary Islands.
4. <i>Falaba</i>	4,806	Mar. 28, 1915	.....do.....	Mail and post parcels for West Africa.
5. <i>Lusitania</i> . . .	30,396	May 6, 1915	.....do.....	United States mail.
6. <i>Candidate</i> . . .	5,858	May 7, 1915	.....do.....	Post parcels for Jamaica.
7. <i>Arabic</i>	15,801	Aug. 19, 1915	.....do.....	Mail for the United States, Canada, etc.
8. <i>Hesperian</i> . . .	10,920	Sept. 4, 1915	.....do.....	Mail and post parcels for the United States and Canada.
9. <i>Silver Ash</i> . . .	3,753	Oct. 6, 1915	(?)	Mail of His British Majesty's ships.
10. <i>Linkmoor</i> . . .	4,306	Sept. 20, 1915	(?)	Do.
11. <i>Persia</i>	7,964	Dec. 29, 1915	Torpedoed . .	Mail and post parcels for the Near East.
12. <i>Ville de la Ciotat</i> (French).	6,390	Dec. 24, 1915	Sunk by a German submarine.	Far East mail.
13. <i>Author</i>	3,496	(?)	(?)	Africa mail.

The British Ambassador to the Secretary of State.

No. 85.]

BRITISH EMBASSY,
Washington, April 3, 1916.

SIR: I have the honour, by direction of Sir Edward Grey, His Majesty's Principal Secretary of State for Foreign Affairs, to transmit to you herewith a memorandum¹ stating the contentions of His Majesty's Government and the French Government in regard to their right to detain and examine parcels and letter mails on neutral vessels.

I have, etc.,

CECIL SPRING RICE.

The Secretary of State to the British Ambassador.²

No. 1186.]

DEPARTMENT OF STATE,
Washington, May 24, 1916.

EXCELLENCY: I have the honor to acknowledge receipt of Your Excellency's note of April 3, last, transmitting a memorandum dated February 15, 1916, and communicated in substance to the American Ambassador in London on February 28, in which are stated the contentions of the British and French Governments in regard to the right to detain and examine parcel and letter mails *en route* by sea between the United States and Europe.

After a discussion of the use of the mails for the transmission of "parcels" and of the limitations to be placed on "inviolable mail," the joint memorandum of February 15 closes with the following assertions:

1. That from the standpoint of their right of visitation and eventual arrest and seizure, merchandise shipped in post parcels needs not and shall not be treated otherwise than merchandise shipped in any other manner.

2. That the inviolability of postal correspondence stipulated by the Eleventh Convention of The Hague of 1907 does not in any way affect the right of the allied Governments to visit and, if occasion arise, arrest and seize merchandise hidden in the wrappers, envelopes, or letters contained in the mail bags.

3. That true to their engagements and respectful of genuine "correspondence," the allied Governments will continue, for the present, to refrain on the high seas

¹ Not printed. Identical with memorandum transmitted with the note of the French Ambassador, April 3, 1916, *supra*, p. 406.

² Same to the French Ambassador.

from seizing and confiscating such correspondence, letters, or despatches, and will insure their speediest possible transmission as soon as the sincerity of their character shall have been ascertained.

In reply the Government of the United States desires to state that it does not consider that the Postal Union Convention of 1906 necessarily applies to the interference by the British and French Governments with the oversea transportation of mails of which the Government of the United States complains. Furthermore, the allied powers appear to have overlooked the admission of the Government of the United States that post parcels may be treated as merchandise subject to the exercise of belligerent rights as recognized by international law. But the Government of the United States does not admit that such parcels are subject to the "exercise of the rights of police supervision, visitation, and eventual seizure which belongs to belligerents as to *all cargoes* on the high seas," as asserted in the joint note under acknowledgment.

It is noted with satisfaction that the British and French Governments do not claim, and, in the opinion of this Government, properly do not claim, that their so-called "blockade" measures are sufficient grounds upon which to base a right to interfere with all classes of mail matter in transit to or from the central powers. On the contrary, their contention appears to be that, as "genuine correspondence" is under conventional stipulation "inviolable," mail matter of other classes is subject to detention and examination. While the Government of the United States agrees that "genuine correspondence" mail is inviolable, it does not admit that belligerents may search other private sea-borne mails for any other purpose than to discover whether they contain articles of enemy ownership carried on belligerent vessels or articles of contraband transmitted under sealed cover as letter mail, though they may intercept at sea all mails coming out of and going into ports of the enemy's coasts which are effectively blockaded. The Governments of the United States, Great Britain, and France, however, appear to be in substantial agreement as to principle. The method of applying the principle is the chief cause of difference.

Though giving assurances that they consider "genuine correspondence" to be "inviolable," and that they will, "true to their engagements," refrain "on the high seas" from seizing and confiscating such correspondence, the allied Governments proceed to deprive neutral Governments of the benefits of these assurances by seizing and confiscating mail from vessels in port instead of at sea. They compel neutral ships without

just cause to enter their own ports or they induce shipping lines, through some form of duress, to send their mail ships *via* British ports, or they detain all vessels merely calling at British ports, thus acquiring by force or unjustifiable means an illegal jurisdiction. Acting upon this enforced jurisdiction, the authorities remove all mails, genuine correspondence as well as post parcels, take them to London, where every piece, even though of neutral origin and destination, is opened and critically examined to determine the "sincerity of their character," in accordance with the interpretation given that undefined phrase by the British and French censors. Finally the expurgated remainder is forwarded, frequently after irreparable delay, to its destination. Ships are detained *en route* to or from the United States or to or from other neutral countries, and mails are held and delayed for several days and, in some cases, for weeks and even months, even though not routed to ports of North Europe *via* British ports. This has been the procedure which has been practiced since the announcement of February 15, 1916. To some extent the same practice was followed before that date, calling forth the protest of this Government on January 4, 1916. But to that protest the memorandum under acknowledgment makes no reference and is entirely unresponsive. The Government of the United States must again insist with emphasis that the British and French Governments do not obtain rightful jurisdiction of ships by forcing or inducing them to visit their ports for the purpose of seizing their mails, or thereby obtain greater belligerent rights as to such ships than they could exercise on the high seas; for there is, in the opinion of the Government of the United States, no legal distinction between the seizure of mails at sea, which is announced as abandoned, and their seizure from vessels voluntarily or involuntarily in port. The British and French practice amounts to an unwarranted limitation on the use by neutrals of the world's highway for the transmission of correspondence. The practice actually followed by the allied powers must be said to justify the conclusion, therefore, that the announcement of February 15 was merely notice that one illegal practice had been abandoned to make place for the development of another more onerous and vexatious in character.

The present practice is a violation not only of the spirit of the announcement of February 15, but of the rule of The Hague Convention upon which it is concededly based. Aside from this, it is a violation of the prior practice of nations which Great Britain and her allies have in the past assisted to establish and maintain, notwithstanding the state-

ment in the memorandum that "as late as 1907 the letters and despatches themselves could be seized and confiscated." During the war between the United States and Mexico the United States forces allowed British steamers to enter and depart from the port of Vera Cruz without molesting the mails intended for inland points. During the American Civil War Lord Russell endeavored to induce the United States to concede that "Her Majesty's mails on board a private vessel should be exempted from visitation or detention." This exemption of mails was urged in October, 1862, in the case of British mails on board the *Adela*. On October 31 Secretary Seward announced that "public mails of any friendly or neutral power duly certified or authenticated as such shall not be searched or opened but be put as speedily as may be convenient on the way to their designated destination." In accordance with this announcement, the Government of the United States, in the case of the British steamship *Peterhoff*, which had been seized with her mails against the protest of Her Majesty's Government, had her mails forwarded to destination unopened.

The same rule was followed by France, as I am advised, in the Franco-Prussian War of 1870; by the United States in the Spanish-American War of 1898; by Great Britain in the South African War, in the case of the German mail steamers *Bundesrath* and *General*; by Japan and substantially by Russia in the Russo-Japanese War of 1904. And even in the present war, as the memorandum of Great Britain and France states, their enemy, Germany, has desisted from the practice of interfering with neutral mails, even on board belligerent steamers. This is illustrated by the case of the French steamer *Floride*, captured by the auxiliary cruiser *Prinz Eitel Friedrich*, cited by the British and French Governments in support of their argument regarding parcel mails. In this case the letter mails of the *Floride*, amounting to 144 sacks, were forwarded to their destination by the commander at the first opportunity upon arriving in the United States. It would seem, therefore, to be conclusively established that the interferences with mails of which this Government justly complains are wrong in principle and in practice.

The arbitrary methods employed by the British and French Governments have resulted most disastrously to citizens of the United States. Important papers which can never be duplicated, or can be duplicated only with great difficulty, such as United States patents for inventions, rare documents, legal papers relating to the settlement of estates, powers of attorney, fire insurance claims, income tax returns, and similar

matters have been lost. Delays in receiving shipping documents have caused great loss and inconvenience by preventing prompt delivery of goods. In the case of the MacNiff Horticultural Company, of New York, large shipments of plants and bulbs from Holland were, I am informed, frozen on the wharves because possession could not be obtained in the absence of documents relating to them which had been removed from the *New Amsterdam*, *Oosterdyk*, and *Rotterdam*. Business opportunities are lost by failure to transmit promptly bids, specifications, and contracts. The Standard Underground Cable Company, of Pittsburgh, for example, sent by mail a tender and specifications for certain proposed electrical works to be constructed in Christiania; after several weeks of waiting, the papers having failed to arrive, the American company was told that the bids could not be longer held open and the contract was awarded to a British competitor. Checks, drafts, money orders, securities, and similar property are lost or detained for weeks and months. Business correspondence relating to legitimate and *bona fide* trade between neutral countries, correspondence of a personal nature, and also certain official correspondence, such as money-order lists and other matter forwarded by Government departments, are detained, lost, or possibly destroyed. For instance, the Postmaster General informs me that certain international money-order lists from the United States to Germany, Greece, and other countries, and from Germany to the United States, sent through the mails, have not reached their destination, though despatched several months ago. It was necessary to have some of these lists duplicated and again dispatched by the steamship *Frederick VIII*, which sailed from New York on April 19, and from which all the mails intended for Germany have been taken and held in British jurisdiction. As a further example of the delay and loss consequent upon the British practice, the Postmaster General also sends me a copy of a letter from the British Postal Administration admitting that the mails were removed from the steamer *Medan* in the Downs on January 30, last, and not forwarded until some time "between the 2d of February and the 2d of March," and that 182 bags of these mails "were lost during transmission to Holland on the 26th day of February by the Dutch steamship *Mecklenburg*." The *Medan* arrived safely at Rotterdam a day or two after she left the Downs. Numerous complaints similar to the foregoing have been received by this Government, the details of which are available, but I believe I have cited sufficient facts to show the unprecedented and vexatious nature of the interference with

mails persisted in by British and French authorities. Not only are American commercial interests injured, but rights of property are violated and the rules of international law and custom are palpably disregarded. I can only add that this continuing offense has led to such losses to American citizens and to a possible responsibility of the United States to repair them, that this Government will be compelled in the near future to press claims for full reclamation upon the attention of His Majesty's Government and that of the French Republic.

The principle being plain and definite, and the present practice of the Governments of Great Britain and France being clearly in contravention of the principle, I will state more in detail the position of the Government of the United States in regard to the treatment of certain classes of sealed mails under a strict application of the principle upon which our Governments seem to be in general accord. The Government of the United States is inclined to the opinion that the class of mail matter which includes stocks, bonds, coupons, and similar securities is to be regarded as of the same nature as merchandise or other articles of property and subject to the same exercise of belligerent rights. Money orders, checks, drafts, notes, and other negotiable instruments which may pass as the equivalent of money are, it is considered, also to be classed as merchandise. Correspondence, including shipping documents, money-order lists, and papers of that character, even though relating to "enemy supplies or exports," unless carried on the same ship as the property referred to, are, in the opinion of this Government, to be regarded as "genuine correspondence," and entitled to unmolested passage.

The Government of the United States, in view of the improper methods employed by the British and French authorities in interrupting mails passing between the United States and other neutral countries and between the United States and the enemies of Great Britain, can no longer tolerate the wrongs which citizens of the United States have suffered and continue to suffer through these methods. To submit to a lawless practice of this character would open the door to repeated violations of international law by the belligerent powers on the ground of military necessity of which the violator would be the sole judge. Manifestly a neutral nation can not permit its rights on the high seas to be determined by belligerents or the exercise of those rights to be permitted or denied arbitrarily by the Government of a warring nation. The rights of neutrals are as sacred as the rights of belligerents and must be as strictly observed.

The Government of the United States, confident in the regard for international law and the rights of neutrals, which the British and French Governments have so often proclaimed and the disregard of which they have urged so vigorously against their enemies in the present war, expects the present practice of the British and French authorities in the treatment of mails from or to the United States to cease and belligerent rights, as exercised, to conform to the principle governing the passage of mail matter and to the recognized practice of nations. Only a radical change in the present British and French policy, restoring to the United States its full rights as a neutral power, will satisfy this Government.

I have, etc.,

ROBERT LANSING.

The British Ambassador to the Secretary of State.

No. 307.]

BRITISH EMBASSY,
Washington, October 12, 1916.

SIR: In conformity with instructions received from Viscount Grey, of Fallodon, His Majesty's Principal Secretary of State for Foreign Affairs, I have the honor to transmit herewith copy of the memorandum,¹ agreed upon by His Majesty's Government and the French Government, embodying the joint reply of the Allies to your note of May 24 regarding the examination of the mails.

I have, etc.,

CECIL SPRING RICE.

[Inclosure—Translation.]

Confidential.

1. By a letter of May 24 last the Secretary of State of the United States was pleased to give the views of the American Government on the memorandum of the Allied Governments concerning mails found on merchant ships on the high seas.

2. The Allied Governments have found that their views agreed with those of the Government of the United States in regard to the Postal Union Convention, which is recognized on both sides to be foreign to the questions now under consideration; post parcels respectively recognized as being under the common rule of merchandise subject to the

¹ Identic memorandum received from the French Embassy.

exercise of belligerent rights, as provided by international law; the inspection of private mails to the end of ascertaining whether they do not contain contraband goods, and, if carried on an enemy ship, whether they do not contain enemy property. It is clear that that inspection which necessarily implies the opening of covers so as to verify the contents could not be carried on on board without being attended with great confusion, causing serious delay to the mails, passengers, and cargoes, and without causing for the letters in transit errors, losses, or at least great risk of miscarriage. That is the reason why the Allies had mail bags landed and sent to centers provided with the necessary force and equipment for prompt and regular handling. In all this the Allied Governments had no other object in view than to limit, as far as possible, the inconvenience that might result for innocent mails and neutral vessels from the legitimate exercise of their belligerent rights in respect to hostile correspondence.

3. The Government of the United States acknowledges it agrees with the Allied Governments as to principles, but expresses certain divergent views and certain criticism as to the methods observed by the Allies in applying these principles.

4. These divergencies of views and criticisms are as follows:

5. In the first place, according to the Government of the United States, the practice of the Allied Governments is said to be contrary to their own declaration, in that, while declaring themselves unwilling to seize and confiscate genuine mails on the high seas, they would obtain the same result by sending, with or without their consent, neutral vessels to Allied ports, there to effect the seizures and confiscations above referred to, and thus exercise over those vessels a more extensive belligerent right than that which is theirs on the high seas. According to the Government of the United States there should be, in point of law, no distinction to be made between seizure of mails on the high seas, which the Allies have declared they will not apply for the present, and the same seizure practiced on board ships that are, whether willingly or not, in an Allied port.

6. On this first point and as regards vessels summoned on the high seas and compelled to make for an Allied port, the Allied Governments have the honor to advise the Government of the United States that they have never subjected mails to a different treatment according as they were found on a neutral vessel on the high seas or on neutral vessels compelled to proceed to an Allied port, they have always ac-

knowledge that visits made in the port after a forced change of course must in this respect be on the same footing as a visit on the high seas, and the criticism formulated by the Government of the United States does not therefore seem warranted.

7. As to ships which of their own accord call at Allied ports it is important to point out that in this case they are really "voluntarily" making the call. In calling at an Allied port the master acts, not on any order from the Allied authorities, but solely carries out the instructions of the owner; neither are those instructions forced upon the said owner. In consideration of certain advantages derived from the call at an Allied port, of which he is at full liberty to enjoy or refuse the benefits, the owner instructs his captain to call at this or that port. He does not, in truth, undergo any constraint. In point of law the Allied Governments think it a rule generally accepted, particularly in the United States (*U. S. vs. Dickelman*, U. S. Supreme Court, 1875; 92 U. S. Rep., 520; Scott's cases, 264), that merchant ships which enter a foreign port thereby place themselves under the laws in force in that port, whether in time of war or of peace, and when martial law is in force in that port. It is therefore legitimate in the case of a neutral merchant ship entering an Allied port for the authorities of the Allied Governments to make sure that the vessel carries nothing inimical to their national defense before granting its clearance. It may be added that the practice of the Germans to make improper use of neutral mails and forward hostile correspondence, even official communications dealing with hostilities, under cover of apparently unoffensive envelopes mailed by neutrals to neutrals, made it necessary to examine mails from or to countries neighboring Germany under the same conditions as mails from or to Germany itself; but as a matter of course, mails from neutrals to neutrals that do not cover such improper uses have nothing to fear.

8. In the second place, according to the Government of the United States the practice now followed by the Allied Governments is contrary to the rule of convention 11 of The Hague, 1907, which they declare their willingness to apply, and would, besides, constitute a violation of the practice heretofore followed by nations.

9. In regard to the value to be attached to the eleventh convention of The Hague, 1907, it may first of all be observed that it only refers to mails found at sea and that it is entirely foreign to postal correspondence found on board ships in ports. In the second place, from the

standpoint of the peculiar circumstances of the present war, the Government of the United States is aware that that convention, as stated in the memorandum of the Allies, has not been signed or ratified by six of the belligerent powers (Bulgaria, Italy, Montenegro, Russia, Serbia, and Turkey); that for that very reason Germany availed itself of Article IX of the convention and denied, so far as it was concerned, the obligatory character in these stipulations; and that for these several reasons the convention possesses in truth but rather doubtful validity in law. In spite of it all, the Allied Governments are guided in the case of mails found on board ships in ports by the intentions expressly manifested in the conferences of The Hague sanctioned in the preamble to convention 11, and tending to protect pacific and innocent commerce only. Mails possessing that character are forwarded as quickly as circumstances permit. In regard to mails found on vessels at sea the Allied Governments have not for the present refused to observe the terms of the convention reasonably interpreted; but they have not admitted and can not admit that there is therein a final provision legally binding them, from which they could not possibly depart. The Allied Governments expressly reserve to themselves the right to do so in case enemy abuses and frauds, dissimulations and deceits should make such a measure necessary.

10. As for the practice previously followed by the powers in the time of former wars, no general rule can easily be seen therein prohibiting the belligerents from exercising on the open seas, as to postal correspondence, the right of supervision, surveillance, visitation, and, the case arising, seizure and confiscation, which international law confers upon them in the matter of any freight outside of the territorial waters and jurisdiction of the neutral powers.

11. On the high seas, under international law, it is for the belligerents to seek and prevent transportation or other acts by which neutral vessels may lend their coöperation and assistance to hostile operations of the enemy. Now, as has long ago been observed (among others, Lord Stowell in *The Atalanta*, 6 Robinson, 440, 1, English Prize Cases, 607; Scott's Cases, 780), a few lines of a letter delivered to an enemy may be as useful as or even more useful than a cargo of arms and ammunition to promote his war operations. The assistance rendered in such cases by the vessel carrying such a letter is as dangerous for the other belligerent as the assistance resulting from the transportation of military cargoes. As a matter of fact, experience has in the course of

the present war demonstrated the truth of this remark. Hostile acts which had been projected in mails have failed. Dangerous plots, from which even neutral countries are not safe at the hands of the enemy, were discovered in the mails and baffled. Finally the addressees of certain letters which the Allies had seen fit to respect have evidenced a satisfaction the hostile character of which removed every doubt as to the significance of those letters.

12. The report adopted by the Conference of The Hague in support of convention 11 leaves little doubt as to the former practice in the matter: "The seizure, opening the bags, examination, confiscation if need be, in all cases delay or even loss, are the fate usually awaiting mail bags carried by sea in time of war." (Second Peace Conference, Acts and Documents, vol. 1, p. 266.)

13. The American note of May 24, 1916, invokes the practice followed by the United States during the Mexican and Civil Wars; the practice followed by France in 1870; by the United States in 1898; by Great Britain in the South African War; by Japan and Russia in 1904; and now by Germany.

14. As regards the proceedings of the German Empire toward postal correspondence during the present war, the Allied Governments have informed the Government of the United States of the names of some of the mail steamers whose mail bags have been—not examined to be sure—but purely and simply destroyed at sea by the German naval authorities. Other names could very easily be added—the very recent case of the mail steamer *Hudikswall* (Swedish), carrying 670 mail bags, may be cited.

15. The Allied Governments do not think that the criminal habit of sinking ships, passengers, and cargoes, or abandoning on the high seas the survivors of such calamities is, in the eyes of the Government of the United States, any justification for the destruction of the mail bags on board; and they do not deem it to the purpose to make a comparison between these destructive German proceedings and the acts of the Allies in supervising and examining enemy correspondence.

16. As to the practice of Russia and of Japan, it may be permitted to doubt that it was at variance with the method of the Allied Governments in the present war.

17. The imperial Russian decree of May 13–25, 1877, for the exercise of the right of visit and capture, provides, paragraph 7: "The following acts which are forbidden to neutrals are assimilated to contraband of

war: The carrying * * * of despatches and correspondence of the enemy." The Russian imperial decree of September 14, 1904, reproduces the same provision. The procedure followed in regard to the mail steamers, and the prize decisions bear witness that public or private mails found on board neutral vessels were examined, landed, and, when occasion arose, seized.

18. Thus, in May and July, 1904, postal correspondence carried on the steamships *Osiris* (British) and *Prinz Heinrich* (German) was examined by the Russian cruisers to see whether it contained Japanese correspondence. Thus, again, in July, 1904, the steamer *Calchas* (British), captured by Russian cruisers, had 16 bags of mail that had been shipped at Tacoma by the postal authorities of the United States seized on board and landed and the prize court of Vladivostock examined their contents, which it was recognized it could lawfully do. (Russian Prize Cases, p. 139.)

19. As regards the practice of Japan, the Japanese rules concerning prizes, dated March 15, 1904, made official enemy correspondence, with certain exceptions, contraband of war. They ordered the examination of mail bags on mail steamers unless there was on board an official of the Post Office, making a declaration in writing and under oath that the bags contained no contraband; it was even added that no account should be taken of such a declaration if there existed grave suspicions. On the other hand, the Japanese Prize Court rules acknowledged the power of those courts in the examination of prize cases to examine letters and correspondence found on board neutral vessels. (Takahashi, "International Law Applied to Russo-Japanese War," p. 568.)

20. The French practice during the war of 1870 is found outlined in the naval instructions of July 26, 1870, under which official dispatches were on principle assimilated to contraband, and official or private letters found on board captured vessels were to be sent immediately to the Minister of Marine. Subsequently the circumstances of war permitted of the rule in additional instructions, under which, if the vessel to be visited was a mail steamer having on board an official of the post office of the Government whose flag she displayed, the visiting officer might be content with that official's declaration regarding the nature of the dispatches.

21. During the South African War the British Government was able to limit its intervention in the forwarding of postal correspondence and mails as far as the circumstances of that war allowed, but it did

not cease to exercise its supervision of the mails intended for the enemy.

22. As to the practice followed by the Government of the United States during the American Civil War, particularly in the *Peterhoff* case, cited in the American memorandum of May 24, 1916, the following instructions issued in that case by the Secretary of State of the United States do not seem to imply anything but the forwarding of correspondence which has been found to be innocent: "I have, therefore, to recommend that in this case, if the district attorney has any evidence to show the mails are simulated and not genuine, it shall be submitted to the court; if there be no reasonable grounds for that belief, then that they be put on their way to their original destination." (Letter of Mr. Seward, Secretary of State, to Mr. Welles, Secretary of the Navy, April 15, 1863; VII Moore's Dig., p. 482.)

23. Finally, as regards the free transit granted to mails by the United States during the Mexican War, one may be allowed to recall the circumstances under which this proceeding was adopted. By a letter dated May 20, 1846, notified on the following 10th of July, the commander of the United States cruiser *St. Mary*, announced the blockade of the port of Tampico. Although that measure authorized, without a doubt, the seizure and confiscation of all correspondence for the blockaded port, the American naval authorities, on learning the circumstances of the case, declared "Neutral noncommercial mail packets are free to enter and depart," and it was even added that "Mexican boats engaged exclusively in fishing will be allowed to pursue their labour unmolested." (British State Papers, vol. 35, 1846-47.)

24. It seems difficult to compare the blockade of the port of Tampico in 1846 with the measures taken by the Allies in the course of this war to reduce the economic resistance of the German Empire, or to find in the method then adopted by the United States a precedent which condemns the practice now put in use by the Allied Governments.

25. To waive the right to visit mail steamers and mail bags intended for the enemy seemed in the past (Dr. Lushington, "Naval Prize Law," Intro., p. vii) a sacrifice which hardly could be expected of belligerents. The Allied Governments have again noted in their preceding memorandum how and why, relying on certain declarations of Germany, they had thought in the course of the Second Peace Conference of 1907 they could afford to waive that right. They have also drawn the attention of the Government of the United States to the fraudulent use Germany

hastened to make of this waiver of the previous practices above mentioned.

26. After pointing to a certain number of specific cases where American interests happened to be injured from the postal supervision exercised by the British authorities, forming the subject of the special memorandum of the Government of His Majesty, dated July 20, 1916, the Government of the United States was pleased to make known its views as to what is to be and is not to be recognized as not possessing the charter of postal correspondence.

27. In this respect the Government of the United States admits that shares, bonds, coupons, and other valuable papers; money orders, checks, drafts, bills of exchange, and other negotiable papers, being the equivalent of money, may, when included in postal shipments, be considered as of the same nature as merchandise and other property, and therefore be also subjected to the exercise of belligerent rights.

28. Yet the American memorandum adds that correspondence, including shipping documents, lists of money orders, and documents of this nature, even though referring to shipments to or exports by the enemy, must be treated as mail and pass freely unless they refer to merchandise on the same ship that is liable to capture.

29. As regards shipping documents and commercial correspondence found on neutral vessels, even in an Allied port and offering no interest of consequence as affecting the war, the Allied Governments have instructed their authorities not to stop them but to see that they are forwarded with as little delay as possible. Mail matter of that nature must be forwarded to destination as far as practicable on the very ship on which it was found or by a speedier route, as is the case for certain mails inspected in Great Britain.

30. As for the lists of money orders to which the Government of the United States assigns the character of ordinary mail, the Allied Governments deem it their duty to draw the attention of the Government of the Government of the United States to the following practical consideration:

31. As a matter of fact, the lists of money orders mailed from the United States to Germany and Austria-Hungary correspond to moneys paid in the United States and payable by the German and Austro-Hungarian post offices. Those lists acquaint those post offices with the sums that have been paid there which in consequence they have to pay to the addressees. In practice, such payment is at the disposal of such

addressees and is effected directly to them as soon as those lists arrive and without the requirement of the individual orders having come into the hands of the addressees. These lists are thus really actual money orders transmitted in lump in favor of several addressees. Nothing, in the opinion of the Allied Governments, seems to justify the liberty granted to the enemy country so to receive funds intended to supply by that amount its financial resisting power.

32. The American memorandum sees fit firmly to recall that neutral and belligerent rights are equally sacred and must be strictly respected. The Allied Governments, so far as they are concerned, wholly share that view. They are sincerely striving to avoid an encroachment by the exercise of their belligerent rights on the legitimate exercise of the rights of innocent neutral commerce, but they hold that it is their belligerent right to exercise on the high seas the supervision granted them by international law to impede any transportation intended to aid their enemy in the conduct of the war and to uphold his resistance. The rights of the United States as a neutral power can not, in our opinion, imply the protection granted by the Federal Government to shipments, invoices, correspondence, or communications in any shape whatever having an open or concealed hostile character and with a direct or indirect hostile destination, which American private persons can only effect at their own risk and peril. That is the very principle which was expressly stated by the President of the United States in his neutrality proclamation.

33. Furthermore, should any abuses, grave errors, or derelictions committed by the Allied authorities charged with the duty of inspecting mails be disclosed to the Governments of France and Great Britain, they are now as they ever were ready to settle responsibility therefor in accordance with the principles of law and justice which it never was and is not now their intention to evade.